

COMMITTEE SUBSTITUTE

FOR

H. B. 2975

(BY DELEGATES MARTIN, SKAFF, STOWERS, HALL,
WELLS AND STAGGERS)

(Originating in the Committee on the Judiciary)
[February 22, 2011]

A BILL to amend and reenact §17A-4-10 of the Code of West Virginia, 1931, as amended, relating to vehicles scraped, compressed, dismantled or destroyed; providing an additional means to notify the division; and prescribing form and providing for the use of additional brands used by other jurisdictions that are consistent with the National Motor Vehicle Title Information System.

Be it enacted by the Legislature of West Virginia:

That §17A-4-10 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 4. TRANSFERS OF TITLE OR INTEREST.

§17A-4-10. Salvage certificates for certain wrecked or damaged vehicles; fee; penalty.

1 (a) In the event a motor vehicle is determined to be a total
2 loss or otherwise designated as “totaled” by ~~any~~ an insurance
3 company or insurer, and upon payment of a total loss claim
4 to ~~any~~ an insured or claimant owner for the purchase of the
5 vehicle, the insurance company or the insurer, as a condition
6 of the payment, shall require the owner to surrender the
7 certificate of title: *Provided*, That an insured or claimant
8 owner may choose to retain physical possession and
9 ownership of a total loss vehicle. If the vehicle owner
10 chooses to retain the vehicle and the vehicle has not been
11 determined to be a cosmetic total loss in accordance with
12 subsection (d) of this section, the insurance company or
13 insurer shall also require the owner to surrender the vehicle

14 registration certificate. The term “total loss” means a motor
15 vehicle which has sustained damages equivalent to seventy-
16 five percent or more of the market value as determined by a
17 nationally accepted used car value guide or meets the
18 definition of a flood-damaged vehicle as defined in this
19 section.

20 (b) The insurance company or insurer shall, prior to the
21 payment of the total loss claim, determine if the vehicle is
22 repairable, cosmetically damaged or nonrepairable. Within
23 ten days of payment of the total loss claim, the insurance
24 company or insurer shall surrender the certificate of title, a
25 copy of the claim settlement, a completed application on a
26 form prescribed by the commissioner and the registration
27 certificate if the owner has chosen to keep the vehicle to the
28 Division of Motor Vehicles.

29 (c) If the insurance company or insurer determines that
30 the vehicle is repairable, the division shall issue a “salvage
31 certificate”, on a form prescribed by the commissioner, in the
32 name of the insurance company, or the insurer or the vehicle

33 owner if the owner has chosen to retain the vehicle. The
34 certificate shall contain, on the reverse, ~~thereof~~ spaces for one
35 successive assignment before a new certificate at an
36 additional fee is required. Upon the sale of the vehicle, the
37 insurance company, ~~or~~ insurer or ~~the~~ vehicle owner if the
38 owner has chosen to retain the vehicle, shall complete the
39 assignment of ownership on the salvage certificate and
40 deliver it to the purchaser. The vehicle ~~shall~~ may not be
41 titled or registered for operation on the streets or highways of
42 this state unless there is compliance with subsection (g) of
43 this section. The division shall charge a fee of \$15 for each
44 salvage title issued.

45 (d) If the insurance company or insurer determines the
46 damage to a totaled vehicle is exclusively cosmetic and no
47 repair is necessary in order to legally and safely operate the
48 motor vehicle on the roads and highways of this state, the
49 insurance company or insurer shall, upon payment of the
50 claim, submit the certificate of title to the division. Neither
51 the insurance company nor the division may require the

52 vehicle owner to surrender the registration certificate in the
53 event of a cosmetic total loss settlement.

54 (1) The division shall, without further inspection, issue a
55 title branded “cosmetic total loss” to the insured or claimant
56 owner if the insured or claimant owner wishes to retain
57 possession of the vehicle, in lieu of a “salvage certificate”.
58 The division shall charge a fee of \$5 for each “cosmetic total
59 loss” title issued. The terms “cosmetically damaged” and
60 “cosmetic total loss” do not include any vehicle which has
61 been damaged by flood or fire. The designation “cosmetic
62 total loss” on a title may not be removed.

63 (2) If the insured or claimant owner elects not to take
64 possession of the vehicle and the insurance company or
65 insurer retains possession, the division shall issue a cosmetic
66 total loss salvage certificate to the insurance company or
67 insurer. The division shall charge a fee of \$15 for each
68 cosmetic total loss salvage certificate issued. The division
69 shall, upon surrender of the cosmetic total loss salvage
70 certificate issued under the provisions of this paragraph and

71 payment of the five percent ~~privilege~~ motor vehicle sales tax
72 on the fair market value of the vehicle as determined by the
73 commissioner, issue a title branded “cosmetic total loss”
74 without further inspection.

75 (e) If the insurance company or insurer determines that
76 the damage to a totaled vehicle renders it nonrepairable,
77 incapable of safe operation for use on roads and highways
78 and ~~which has~~ as having no resale value except as a source of
79 parts or scrap, the insurance company or vehicle owner shall,
80 in the manner prescribed by the commissioner, request that
81 the division issue a nonrepairable motor vehicle certificate in
82 lieu of a salvage certificate. The division shall issue a
83 nonrepairable motor vehicle certificate without charge.

84 (f) Any owner who scraps, compresses, dismantles or
85 destroys a vehicle without further transfer or sale for which
86 a certificate of title, nonrepairable motor vehicle certificate
87 or salvage certificate has been issued shall, within ~~twenty~~
88 forty-five days, surrender the certificate of title,

89 nonrepairable motor vehicle certificate, or salvage certificate
90 to the division for cancellation.

91 (g) Any person who purchases or acquires a vehicle as
92 salvage or scrap, to be dismantled, compressed or destroyed,
93 shall, within ~~twenty~~ forty-five days, surrender ~~the certificate~~
94 ~~to the division.~~ to the division the certificate of title,
95 nonrepairable motor vehicle certificate, salvage certificate or
96 a statement of cancellation signed by the seller, on a form
97 prescribed by the commissioner. Subsequent purchasers of
98 salvage or scrap are not required to comply with the
99 notification requirement.

100 ~~(g)~~ (h) If the motor vehicle is a “reconstructed vehicle”
101 as defined in this section or section one, article one of this
102 chapter, it may not be titled or registered for operation until
103 it has been inspected by an official state inspection station
104 and by the Division of Motor Vehicles. Following an
105 approved inspection, an application for a new certificate of
106 title may be submitted to the division. ~~however,~~ The
107 applicant ~~shall be~~ is required to retain all receipts for

108 component parts, equipment and materials used in the
109 reconstruction. The salvage certificate shall also be
110 surrendered to the division before a certificate of title may be
111 issued with the appropriate brand.

112 (h) (i) The owner or title holder of ~~any~~ a motor vehicle
113 titled in this state which has previously been branded in this
114 state or another state as “salvage”, “reconstructed”, “cosmetic
115 total loss”, “cosmetic total loss salvage”, “flood” or “fire”, ~~or~~
116 an equivalent term under another state's laws or a term
117 consistent with the intent of the National Motor Vehicle Title
118 Information System established pursuant to 49 U.S.C.
119 §30502 shall, upon becoming aware of the brand, apply for
120 and receive a title from the Division of Motor Vehicles on
121 which the brand “reconstructed”, “salvage”, “cosmetic total
122 loss”, “cosmetic total loss salvage”, “flood”, ~~or~~ “fire” or
123 other brand is shown. The division shall charge a fee of \$5
124 for each title so issued.

125 (i) (j) If application is made for title to a motor vehicle, the
126 title to which has previously been branded “reconstructed”,

127 “salvage”, “cosmetic total loss”, “cosmetic total loss
128 salvage”, “flood”, ~~or~~ “fire” or other brand by the Division of
129 Motor Vehicles under this section and said application is
130 accompanied by a title from another state which does not
131 carry the brand, the division shall, before issuing the title,
132 affix the brand “reconstructed”, “cosmetic total loss”,
133 “cosmetic total loss salvage”, “flood”, ~~or~~ “fire” or other
134 brand to the title. The ~~privilege~~ motor vehicle sales tax paid
135 on a motor vehicle titled as “reconstructed”, “cosmetic total
136 loss”, “flood”, ~~or~~ “fire” or other brand under the provisions
137 of this section shall be based on fifty percent of the fair
138 market value of the vehicle as determined by a nationally
139 accepted used car value guide to be used by the
140 commissioner.

141 (j) (k) The division shall charge a fee of \$15 for the
142 issuance of each salvage certificate or cosmetic total loss
143 salvage certificate but shall not require the payment of the
144 five percent ~~privilege~~ motor vehicle sales tax. However,
145 upon application for a certificate of title for a reconstructed,

146 cosmetic total loss, flood or fire damaged vehicle or other
147 brand, the division shall collect the five percent privilege tax
148 on the fair market value of the vehicle as determined by the
149 commissioner unless the applicant is otherwise exempt from
150 the payment of such privilege tax. A wrecker/dismantler/
151 rebuilder, licensed by the division, is exempt from the
152 payment of the five percent privilege tax upon titling a
153 reconstructed vehicle. The division shall collect a fee of \$35
154 per vehicle for inspections of reconstructed vehicles. These
155 fees shall be deposited in a special fund created in the State
156 Treasurer's Office and may be expended by the division to
157 carry out the provisions of this article: *Provided*, That on and
158 after the first day of July, 2007, any balance in the special
159 fund and all fees collected pursuant to this section shall be
160 deposited in the State Road Fund. Licensed wreckers/
161 dismantlers/rebuilders may charge a fee not to exceed \$25 for
162 all vehicles owned by private rebuilders which are inspected
163 at the place of business of a wrecker/dismantler/rebuilder.

164 ~~(k)~~ (l) As used in this section:

165 (1) “Reconstructed vehicle” means the vehicle was
166 totaled under the provisions of this section or by the
167 provisions of another state or jurisdiction and has been
168 rebuilt in accordance with the provisions of this section or in
169 accordance with the provisions of another state or jurisdiction
170 or meets the provisions of subsection (m), section one, article
171 one of this chapter.

172 (2) “Flood-damaged vehicle” means that the vehicle was
173 submerged in water to the extent that water entered the
174 passenger or trunk compartment.

175 (3) “Other brand” means a brand consistent with the
176 intent of the National Motor Vehicle Title Information
177 System established pursuant to 49 U.S.C. §30502 and rules
178 promulgated by the United States Department of Justice to
179 alert consumers, motor vehicle dealers or the insurance
180 industry of the history of a vehicle.

181 (†) (m) Every vehicle owner shall comply with the branding
182 requirements for a totaled vehicle whether or not the owner
183 receives an insurance claim settlement for a totaled vehicle.

184 (m) (n) A certificate of title issued by the division for a
185 reconstructed vehicle shall contain markings in bold print on
186 the face of the title that it is for a reconstructed, flood or fire
187 damaged vehicle.

188 (n) (o) Any person who knowingly provides false or
189 fraudulent information to the division that is required by this
190 section in an application for a title, a cosmetic total loss title,
191 a reconstructed vehicle title or a salvage certificate or who
192 knowingly fails to disclose to the division information
193 required by this section to be included in the application or
194 who otherwise violates the provisions of this section ~~shall be~~
195 is guilty of a misdemeanor and, upon conviction thereof,
196 shall for each incident be fined not less than \$1,000 nor more
197 than \$2,500, or imprisoned in jail for not more than one year,
198 or both fined and imprisoned.